

Jim Spinner, Esquire
SERVICE, SPINNER & GRAY
2043 East Center - P.O. Box 6009
Pocatello, Idaho 83205-6009
Telephone: (208) 232-4471
FAX: (208) 232-1808
Idaho State Bar No. 3417

Attorneys for R. Sam Hopkins, Trustee

FILED
OCT 17 PM 3:40
CLERK OF COURT
J. H. HARRIS
CLERK OF COURT

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

In the Matter of:

LYNN KETTERLING and JEANNE
KETTERLING dba KETTERLING FARMS,

Debtors.

Case No.03-41318

**NOTICE OF SALE BY
TRUSTEE-FARM PROPERTY AND
FOR AUTHORITY TO PAY
REALTOR'S COMMISSION**

TO ALL PARTIES IN INTEREST:

YOU ARE HEREBY NOTIFIED that the Trustee in the above named Chapter 7 bankruptcy proceeding, R. Sam Hopkins, Trustee, will sell the following property of the above estate pursuant to 11 U.S.C. § 363 and L.R.B.P. § 2002.1, for the benefit of the creditors of the named bankruptcy estate, unless a written objection thereto is filed with the Court and a copy **received** by the Trustee, R. Sam Hopkins, at his address: P.O. Box 3014, Pocatello, Idaho 83206-3014, and attorney for the Trustee, Jim Spinner, Esq., at his address: P.O. Box 6009, Pocatello, Idaho 83205-6009, on or before **October 12, 2004.**

The Trustee as part of the sale, will also seek authority to pay a realtor's commission to Jerry Hines, of Century 21, Riverside Realty, realtor for the Trustee, on the sale, if approved and closed, as set forth below. The specifics of the proposed sale are as follows:

1. DESCRIPTION OF PROPERTY TO BE SOLD: Approximately 118 acres of bare ground, the majority of which is tillable farm ground located at an address commonly known as 425 North 500 West, Paul, Minidoka County, Idaho, more particularly described as:

Tract C less tax 1, Section 34, Township 8 South, Range 23 EBM, Minidoka County, Idaho;

The sale shall also include:

a. Five center drive irrigation wheel lines, buried mainline, A & B irrigation shares associated with the property, and irrigation pump currently on site for pressurization.

b. A total of 160 beet shares with Snake River Sugar Company used with the property.

2. TIME AND PLACE AND TYPE OF SALE: Sale will be a private sale to Patterson Land and Livestock, Paul, Idaho, or their designees or assigns. Said Sale is expressly subject to the Bankruptcy Court approval. In the event an objection is made to the sale, the sale will be set for hearing before the Court. If the objection is based on a viable, higher offer being made for all the property being sold, the Court will be asked to conduct an auction of the property to the highest bidder, in cash. In the event of such auction, the Trustee would propose some guidelines as set forth in section 4 herein.

3. TERMS OF SALE: The property shall be sold for the total sum of \$231,100.00. The Buyer has paid the Trustee's realtor an earnest money deposit of \$10,000.00 on the sale. Of the total sale price \$171,100.00 is for the real property and irrigation shares and equipment and \$60,000.00 is for the beet shares. Sale shall be free and clear of all liens and claims with any valid liens or claims to attach to the proceeds of sale. The irrigation equipment is sold "as is/where is" without warranty of whatsoever nature by the Trustee. The Trustee will pay for a standard owner's title policy and share equally in typical closing costs.

The Trustee has also agreed to have deeds and/or releases prepared by October 12, 2004, for use by Buyer, to straighten property lines on the real property to be sold, per existing surveys. The Buyer will obtain signatures of parties who will need to execute the deeds or other releases necessary to straighten the property lines, or the Buyer may waive said requirement if signatures are not obtained within 60 days of September 17, 2004. The Trustee agrees to pay up to a maximum of \$1,000.00 in costs incurred in obtaining deeds to straighten the property lines.

The Trustee will pay any delinquent property taxes on the property and current property taxes will be prorated to the extent possible to date of closing. There are approximately \$9,600.00 in water assessments due on the real property, which will either be paid by the Trustee or, if paid by the Buyer, will be credited against the purchase price at closing.

Buyer shall take possession of the property upon expiration of the notice period or upon Court approval if an objection is filed. Buyer acknowledges the any monies expended by Buyer on the property prior to closing are not refundable and Buyer has no claim against the bankruptcy estate.

The property is otherwise being purchased in a "as is/where is" condition. The sale is subject to the Trustee obtaining a title insurance policy insuring clear title consistent with the listed debts and charges listed herein.

The sale is conducted pursuant to 11 U.S.C. § § 363(f)(2), (f)(3) and (f)(5). The Trustee is aware that the United States Farm Service Agency has secured liens against the real property, irrigation property and beet shares being sold in the approximate amount of \$ 219,000.00. The Trustee anticipates there will be little or no equity over the lien of Farm Service Agency, but the sale, by

paying the debt to Farm Service Agency, will provide substantial equity for the estate through other property previously collected and to be collected by the Trustee. The Trustee is not aware of any other valid liens or claims against the property to be sold.

4. POSSIBLE AUCTION OF PROPERTY: In the event an objection is raised to the sale of the above described property by any person or entity willing and able to pay more than the price offered of \$231,100.00, and said objection is properly filed on or before October 12, 2004, the Trustee may request the Court to conduct a public auction of the property being sold to the highest bidder in cash. Any prospective bidder who bids more than the amount offered for the sale of the property herein would be expected to pay, at the hearing, the sum of \$20,000.00 as earnest money. A letter of credit or acceptable representation of an ability to pay the balance of the purchase price will need to be shown by the bidder. The balance of the bid made by the successful purchaser shall be paid to the Trustee in full within five (5) business days following the auction. In the event the successful bidder does not complete the sale of the Trustee within the five (5) days provided, the \$20,000.00 earnest money would be deemed forfeited by the bidder to the bankruptcy estate and the Trustee would close the sale with the party making the next highest offer for the property. Further terms of the sale would be set by the Court including the increments of bids to be made at any auction. The successful bidder would also be expected to close the sale subject to all the terms and conditions of the prospective buyer herein.

5. PAYMENT OF REALTOR'S COMMISSION: The sale submitted by the Trustee herein was obtained by Jerry Hines of Century 21 Riverside Realty, a realtor employed by the Trustee and approved by the Bankruptcy Court. The Trustee seeks Court approval to pay from the sale proceeds received and allocated to the real property and irrigation shares and equipment of \$171,100.00, a realtor's commission of 6% of the purchase price, which will total \$10,266.00. No real estate commission will be paid on the sale price of \$60,000.00 for the beet shares. Said commission will be paid by the Trustee as part of sale. In the event a higher offer is made for the property, said realtor would still be entitled to a commission to the extent of the offer submitted herein of \$171,100.00 but would not receive any commission on any amounts received over and above the offer submitted herein.

6. MISCELLANEOUS INFORMATION: Notwithstanding the terms and provisions of Rule 6004(g) of the Rules of Bankruptcy Procedure, the Trustee will request that any order approving this sale should be made effective upon its entry by the Court. In the opinion of the Trustee the sale is for the reasonable liquidation value of the property. The sale will reduce Farm Service Agency's claim in the bankruptcy proceeding, to the benefit of unsecured creditors and will otherwise result in a benefit to the estate. For further information contact the Trustee, R. Sam Hopkins, P.O. Box 3014, Pocatello, ID 83206-3014; Phone: (208) 478-7978 from 9:00 a.m. to 5:00 p.m., Monday-Friday, or the undersigned counsel for the Trustee.

DATED this 17 day of September, 2004.

SERVICE, SPINNER & GRAY
Attorneys for R. Sam Hopkins

By: 

Jim Spinner
P.O. Box 6009
Pocatello, ID 83205-6009
208-232-4471